

NON-SERVICE-CONNECTED DISABILITY PENSION

AGENDA

- Summary of Improved Pension rules
- 2018 Changes to Improved Pension
 - Net worth limit
 - Asset transfer and penalty periods
 - Medical expenses defined



Improved Pension

- **VA Pension Program**
 - Pension benefits are based on disability
 - Pension is a needs-based program, similar to SSDI
 - Designed to provide supplemental income to wartime Vets
 - Special monthly pension (SMP) available for Vets who require aid and attendance (A&A) or meet housebound requirements

Improved Pension

- **To be eligible for VA pension, Vet must have:**
 - **Wartime service**
 - **Permanent and total disability**
 - **Low income and net worth**

- **Total and permanent disability does not need to be connected to Vet's service!**



Improved Pension

- **In effect for all claims filed after 12/31/78**
- **Eligibility – Wartime Service:**
 - 90 consecutive days of service, 1 of which during period of war; or
 - total of 90 days active service during one or more periods of war; or

Improved Pension

- **Eligibility – Wartime Service (cont.):**
 - At least 1 day of wartime service resulting in discharge for SC disability
 - Note: Vets who enlisted for first time on or after 9/1/80 required to complete 24 months of continuous service or full period for which called/ordered to active duty

Improved Pension

- **Periods of War (38 C.F.R. § 3.2):**
 - World War II: 12/7/1941 – 12/31/1946
 - Korean War: 6/25/1950 – 1/31/1955
 - Vietnam War: 8/5/1964 – 5/7/1975, but **11/1/1955 (recent change – 8/4/1964 for Vets who served in RVN during that time**
 - Persian Gulf War: 8/2/1990 – present



Improved Pension

- **Eligibility - Permanently and Totally Disabled**
 - **VA must presume Vet P&T for pension if:**
 - **In nursing home long-term due to disability**
 - **Disabled for SSA benefits purposes**
 - **Unemployable from disability to continue for life**
 - **Suffering from permanent disability making it impossible to be gainfully employed or any disorder VA finds is P&T**

Improved Pension

- **Eligibility - Permanently and Totally Disabled**
 - **No P&T requirement for Vets 65 or older**
 - **Vet 65 or over who meets military service & income/net worth requirements is eligible as if P&T**
 - **Permanent and total disability cannot be due to Vet's willful misconduct**

Improved Pension

- **Eligibility – Low Income**
 - Payments of any kind from any source are counted as income during the 12-month annualization period in which received, unless specifically excluded under 38 C.F.R. §§ 3.272 or 3.279

Improved Pension

- **Computing income**
 - **Recurring income:** received in equal amounts at regular intervals that continue throughout the 12-month period (SSA benefits, salary, etc.)
 - Counted on open-ended basis from first of the month after the month in which it was first received
 - **Irregular income:** received in unequal amounts or at irregular intervals
 - Counted for 12-months from beginning of the reporting period in which it was received
 - **Nonrecurring income:** received on one-time basis (inheritance, etc.)
 - Counted for 12-months from first of the month after the month in which it was received

Exclusions from Income

▪ Computing income

▪ Exclusions/deductions include:

- Medical expenses (more on this later)
- Welfare
- VA Pension
- Fire insurance
- Profit from sale of property
- Funds from joint accounts due to death of joint owner
- Victims of Crime Act of 1984
- Interest accrued on retirement annuity accounts
- Gifts and inheritances of property
- Income from property held in trust
- Income from tax returns
- Expenses of last illness & burial of spouse or child
- Educational expenses
- Child's income (in some cases)
- Cash surrender value of life insurance
- Life insurance proceeds
- Native American trust/restricted land income
- Income from state/municipality due to injury or disease
- Radiation Exposure Compensation Act
- Alaska Native Claims Settlement Act

Exclusions from Income

- **VA will not count any money received as part of the COVID-19 stimulus package as income for VA pension purposes (or disability compensation, TDIU, and parent DIC purposes)**
- www.va.gov/coronavirus-veteran-frequently-asked-questions/

Income

- State unemployment compensation IS countable income and cannot be excluded
 - It is NOT a donation from a public or private relief or welfare organization
 - *Cooper v. McDonough*, 33 Vet. App. 341 (2021)

Waiver of Receipt of Income

- **Potential income that is not excludable, but is waived by an individual, is included as countable income**

Improved Pension

- **Eligible Vets and survivors get the maximum annual pension rate (MAPR) reduced by recipient's income**
 - **MAPR for Vet with no dependents: \$13,931**
 - **Housebound rate w/out dependents: \$17,024**
 - **A&A rate w/out dependents: \$23,238**
 - **Rates above effective 12/1/2020**
 - **Higher MAPRs for Vets with dependents**
- **If income higher than MAPR, pension totally offset**

Improved Pension

- **Calculating Improved Pension:**
 - VA first determines the proper MAPR
 - Who is beneficiary (Vet, surviving spouse, or child)?
 - # of dependents?
 - Is beneficiary entitled to housebound or A&A?
 - VA then deducts countable income for VA purposes (IVAP) from the MAPR (projected for next 12 mos.)
 - That amount is divided by 12 to calculate the monthly pension payment rate

2018 Changes to Pension Regulations

- Proposed in 2015
- Final regs published on Sept. 18, 2018
 - **83 Fed. Reg. 47,246**
- Effective Oct. 18, 2018

VA Policy Statement Regarding 2018 Regs



VA pension is a needs-based benefit and is not intended to preserve the estates of individuals who have the means to support themselves. Accordingly, a claimant may not create pension entitlement by transferring covered assets. VA will review the terms and conditions of asset transfers made during the 36-month look-back period to determine whether the transfer constituted transfer of a covered asset. In accordance with § 3.277(a), for any asset transfer, VA may require a claimant to provide evidence such as a Federal income tax return transcript, the terms of a gift, trust, or annuity, or the terms of a recorded deed or other evidence of title.

Excessive Net Worth

- **Old Rule**
 - **Approx. \$80,000**
 - **Assets only**
 - **Under old rule, income not part of net worth**
 - **From Manual M21-1**

Excessive Net Worth

▪ New Rule

- Current net worth limit: \$130,773 (eff. 12/1/2020)
- Limit increased by same % as Social Security increase whenever there is cost-of-living increase in benefit amounts payable under Social Security Act
 - 38 C.F.R. § 3.274(a)
- Net worth limit available at:
www.va.gov/pension/veterans-pension-rates

Excessive Net Worth

- **Net worth = claimant's or beneficiary's assets + annual income**
 - **38 C.F.R. § 3.274(b)**
- **Includes Vet's and spouse's assets**
- **If child's net worth exceeds limit, child will not be considered a dependent child for pension purposes**

Excessive Net Worth

- VA will calculate net worth when it receives:
 - An original pension claim
 - A new pension claim (after a period of non-entitlement)
 - A request to establish a new dependent
 - Info that claimant's net worth has increased or decreased
 - 38 C.F.R. § 3.274(e)



Reduction in Net Worth

- **When annual income decreases**
- **When assets are spent / sold for fair market value**
- **When value of assets decrease**



Reduction in Net Worth

- **Exclusions to income**

- **Example:**

- **Net worth limit = \$130,773**

- **MAPR = \$13,931**

- **Claimant has \$121,000 (assets) + \$13,000 (annual income) = \$134,000**

This exceeds net worth limit (\$130,773)

Reduction in Net Worth

- **Claimant is patient in nursing home and pays annual unreimbursed nursing home fees of \$29,000**
- **Reasonably predictable unreimbursed medical expenses are deductible from annual income to the extent they exceed 5% of applicable MAPR (\$697)**

Reduction in Net Worth

- **VA will subtract claimant's projected expenditures that exceed 5% of applicable MAPR (\$28,303) from annual income, reducing claimant's annual income to \$0**
- **Claimant's net worth is reduced to \$121,000 and no longer exceeds net worth limit to qualify for pension**

Excessive Net Worth

Effective Date

- **After Denial, Reduction, or Discontinuance due to Excessive Net Worth**
 - Effective date = day net worth ceases to exceed limit
 - Claimant must submit certified statement to VA that net worth has decreased
 - VA must receive statement w/in one year of VA's notice to claimant that pension was denied, reduced, or discontinued
 - If decision appealed, claimant can submit statement during appeal
 - 38 C.F.R. § 3.274(g)

Excessive Net Worth

Effective Date for Discontinuance

- **Last day of calendar year in which net worth exceeds limit**
 - 38 C.F.R. § 3.274(h)(1)
- **But, if net worth then decreases below limit before end of calendar year, VA will not discontinue pension**
 - 38 C.F.R. § 3.274(h)(2)

Excessive Net Worth Effective Date

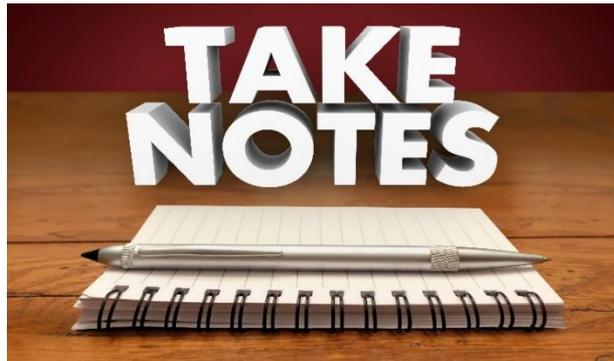
- **Example:**
 - 2/2021: Vet receiving pension; net worth \$120K
 - 6/2021: Net worth rises to \$140K (over limit)
 - 10/2021: Net worth falls to \$115K
 - **Under Section 3.274(h)(2), VA will not discontinue pension award**

Determining Asset Amount of Net Worth

- **Assets: the fair market value of all property an individual owns, including all real and personal property, unless excluded under 38 C.F.R. § 3.275(b), minus the amount of mortgages or other encumbrances specific to the mortgaged or encumbered property**
 - **38 C.F.R. § 3.275(a)(1)**

Determining Asset Amount of Net Worth

- ****Important Change****
 - As with the old rules, claimant's primary residence is excluded from net worth calculation, BUT...



Determining Asset Amount of Net Worth

- Under the new rules, the “residential lot area,” which is excluded from net worth, cannot exceed 2 acres, unless additional acreage is not marketable
- 2 acre rule does not work well because value of land differs across country



Determining Asset Amount of Net Worth

- **Certain personal effects are excluded from calculation of assets**
 - Personal effects consistent with “a reasonable mode of life,” such as appliances and family transportation vehicles
 - 38 C.F.R. §§ 3.275(b) and 3.279 provide full list of exclusions from assets

What About Vets Receiving Pension When Rules Changed?

- **If receiving pension as of 10/18/2018:**
 - If net worth exceeds new limit, Vet will continue to receive pension (unless he or she loses pension for another reason)
- **If pension claim pending on 10/18/2018:**
 - If net worth is below new limit, pension should not be denied due to excessive net worth
 - If net worth is above new limit, VA will make an administrative determination under the old pension rules as to whether individual has excessive net worth

Asset Transfers and Penalty Period

- Remember, these rules went into effect on October 18, 2018
- “Covered asset” means:
 - Part of claimant’s net worth;
 - Was transferred for less than fair market value; and
 - If the asset had not been transferred, it would have caused or partially caused claimant’s net worth to exceed limit

Asset Transfers and Penalty Period

- Only amount in excess of net worth limit will be subject to a penalty
- Fair market value = price a willing buyer would pay and a willing seller would sell
- VA determines fair market value



Asset Transfers and Penalty Period

- **Transfer for less than fair market value” means:**
 - **Selling, conveying, gifting, or exchanging an asset for an amount less than the fair market value of the asset; or**

Asset Transfers and Penalty Period

- A voluntary asset transfer to, or purchase of, any financial instrument or investment that reduces net worth by transferring the asset to, or purchasing, the instrument or investment unless the claimant establishes that he or she has the ability to liquidate the entire balance of the asset for the claimant's own benefit. If the claimant establishes that the asset can be liquidated, the asset is included as net worth.

Asset Transfers and Penalty Period

- **Examples of such instruments or investments include:**
 - **Annuities.** A financial instrument that provides income over a defined period of time for an initial payment of principal.
 - **Trusts.** A legal instrument by which an individual (the grantor) transfers property to an individual or an entity (the trustee), who manages the property according to the terms of the trust, whether for the grantor's own benefit or for the benefit of another individual.
 - **38 C.F.R. § 3.276(a)(5)**

Asset Transfers and Penalty Period

- “Uncompensated value” = the difference between fair market value of asset and amount of compensation the individual received for asset
 - In case of trusts, annuities, or other financial instruments, uncompensated value is amount of money or monetary value of any other type of asset transferred to trust, annuity, or other financial instrument

Asset Transfers and Penalty Period

- Any asset converted into an annuity will confer a transfer penalty (if the claimant would have otherwise been over net worth limit)
- VA wants to eliminate trusts and annuities that are designed to get around VA net worth limit
- Look-back period: 36 months immediately preceding date VA received pension claim
 - **Does not cover any asset transfers prior to 10/18/2018**
 - **38 C.F.R. § 3.276(a)(7)**

Asset Transfers and Penalty Period

- **Exceptions to Transfer Penalty**
 - Assets transferred as result of fraud, misrepresentation, or unfair business practice related to sale or marketing of financial products or services
 - **In these situations, it is best to file a complaint with proper authorities**
 - Assets transferred to trust for child incapable of self-support

Asset Transfers and Penalty Period

- **Penalty Period**
 - 5 year limit
 - Length of penalty period = [total covered asset amount] divided by [monthly penalty rate] (rounded down to nearest whole number)
 - Monthly penalty rate = MAPR for Vet in need of A&A with one dependent divided by 12 (rounded down to nearest dollar)
 - **MAPR based on when Vet filed pension claim**

Asset Transfers and Penalty Period

- **Example**
 - **1/15/2021: Vet transferred covered asset amount of \$30,000**
 - **3/1/2021: Vet filed pension claim**
 - **MAPR A&A w/ 1 dependent: \$27,549**
 - **Monthly penalty rate = \$2,295 ($27,549 \div 12$)**
 - **Penalty period = 13 months ($30,000 \div 2,295$)**

Asset Transfers and Penalty Period

- **Beginning of Penalty Period**
 - **Penalty period begins the first day of the month that follows the asset transfer (or if there were multiple transfers, the first day of the month following the last transfer)**
 - **In previous example:**
 - **13 month penalty period would be 2/1/2021-2/28/2022**
 - **Claimant would be entitled to pension with effective date of 3/1/2022**

Asset Transfers and Penalty Period

- If covered assets are returned to claimant, VA will recalculate or eliminate penalty period if VA receives evidence that assets have been returned within 90 days of VA's notice to claimant of decision concerning penalty period
- **38 C.F.R. § 3.276(e)(5)**

Asset Transfers and Penalty Period

- **VA Forms 21P-527 and 21P-527EZ now ask if the claimant has transferred any assets over the past 3 years**

Medical Expenses

- In the past, there was no definition of what medical expenses could be deducted from countable income
- Now, these expenses are listed in 38 C.F.R. § 3.278



Medical Expenses

- **Medical expenses may include:**
 - Care by a health care provider: payments for services performed within scope of provider's professional capacity
 - Medication, medical supplies, medical equipment, and medical food, vitamins, and supplements
 - Health insurance premiums: premiums for health, medical, hospitalization, long-term care, and Medicare Parts A, B, and D

Medical Expenses

- **Medical expenses may include (cont.):**
 - Smoking cessation products
 - Transportation expenses: cost of transportation to and from health care provider's office (taxi, bus, public transportation, privately owned car expenses including mileage, parking, & tolls)
 - Adaptive equipment: adaptive devices, service animals (including veterinary care)



Medical Expenses

- **Medical expenses may include (cont.):**
 - **Institutional forms of care and in-home care**
 - **Applies to claims for a medical expense deduction for institutional forms of care or in-home care received on or after 10/18/2018 that VA has not previously granted**
 - **Medical expense grants pertaining to institutional or in-home care made prior to 10/18/2018 will continue unless claimant moves to a different facility or employs a different in-home attendant or in-home care agency**

Medical Expenses

- **Institutional forms of care and in-home care (cont.)**
 - **Payments to hospitals, nursing homes, medical foster homes, and inpatient treatment centers (including treatment centers for drug or alcohol addiction)**
 - **Payments for assistance with ADLs and IADLs by in-home attendant (attendant must provide health care or custodial care)**



Medical Expenses

- **ADLs (activities of daily living): basic self-care activities such as:**
 - Bathing
 - Dressing
 - Eating
 - Going to bathroom
 - Getting in out of bed

Medical Expenses

- **IADLs (instrumental activities of daily living) are independent living activities such as:**
 - Shopping
 - Food prep
 - Housekeeping
 - Laundry
 - Finances
 - Transportation for non-medical purposes

Medical Expenses

- **Institutional forms of care and in-home care (cont.)**
 - **Those receiving SMP (HB or A&A) can deduct care of in-home aid without aid being a licensed health care provider (could be friend or family member)**
 - **If not receiving HB or A&A, in-home aid must be licensed health care provider to deduct expense**

Medical Expenses

- Institutional forms of care and in-home care (cont.)
 - **Care in a facility (other than nursing home) can be deducted if care is provided by:**
 - the facility
 - contracted by the facility
 - obtained from third-party provider
 - provided by family or friends

Medical Expenses

- Institutional forms of care and in-home care (cont.):
 - Provider does not need to be health care provider, and payments for assistance with ADLs and IADLs are medical expenses, if disabled individual is receiving health care or custodial care in facility; and
 - Individual needs A&A or is housebound; or
 - Medical professional states in writing that individual needs to be in protected environment

Medical Expenses

- Institutional forms of care and in-home care (cont.):
 - **Meals and lodging deductible if:**
 - Facility provides health care or custodial care for individual; or
 - Med professional states in writing individual needs to be in facility to get third party health care or must receive custodial care or help from family or friends

Medical Expenses

- The following are **NOT** medical expenses (cannot be deducted):
 - Payments for maintenance of general health (ex: vacations, dance classes, etc.)
 - Cosmetic procedures
 - Meals and lodging (except as previously noted)
 - Assistance with IADLs (except as previously noted)

§ 3.551 Reduction because of Hospitalization



- If one of the following beneficiaries receives Medicaid-covered nursing home care, the max amount of pension that person can receive per month is \$90:
 - Vet w/out a spouse or child
 - Surviving spouse w/out a child
 - Surviving child

§ 3.551 Reduction because of Hospitalization



- **Beneficiary is not liable for any pension paid in excess of the \$90 per month by reason of VA's inability or failure to reduce payments, unless that inability or failure is the result of willful concealment, by the beneficiary, of information necessary to make that reduction**

Questions

